HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4310 of 2002
Date of decision : 6.3.2007

Smt.Anju Malik and another **.....Appellants**

versus

Alok Chand and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.N.D.Achint, Advocate for the appellants.
Mr.R.K.Jain, Advocate for respondent No.1.

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ORDER

HEMANT GUPTA, J.

Defendant Nos.6 & 7 are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court, whereby a suit for declaration declaring the plaintiffs as owners of the suit land, was decreed.

One Yaseen was the owner of the land measuring 12 kanals 10 marlas. He executed a General Power of Attorney in favour of Hasmat Ali son of Suleman. The aforesaid attorney executed the sale in favour of Immamudin son of Hasmat Ali and Suleman. The plaintiffs are the purchaser from Immamudin and Suleman vide sale deeds dated 31.7.1986 and 6.8.1986. The owner Yaseen filed a suit for declaration challenging that the said power of attorney in favour of Hasmat Ali is fraudulent and illegal. The said suit was decreed on 22.7.1988. In the said suit, the present plaintiffs were not impleaded as parties. On the basis of decree

dated 22.7.1988, in favour of Yaseen, the defendant Nos.6 & 7 have purchased the property from Yaseen vide registered sale deed dated 27.6.1989.

The learned First Appellate Court found that the decree dated 22.7.1988 cannot effect the rights of the plaintiffs as the plaintiffs were not impleaded as party in the said suit. Consequently, it was found that Yaseen has no interest in the property which could be sold to defendant Nos.6 & 7 vide registered sale deed dated 27.6.1989.

It could not be disputed by the learned counsel for the appellants that the plaintiffs were not party in the aforesaid suit when the decree was granted by the Court in favour of Yaseen on 22.7.1988. However, it is contended that since the vendor of the plaintiffs was party in the said suit, therefore, the said decree is binding on the plaintiffs. The aforesaid suit was filed by Yaseen on 16.8.1986 i.e. after sale was effected by the General Power of Attorney on behalf of Yaseen, in favour of the plaintiffs. Therefore, In the absence of plaintiffs as party in the aforesaid suit, the decree dated 22.7.1988 cannot effect the rights of the plaintiffs-respondents.

Consequently, I do not find any illegality or irregularity in the findings recorded by the learned First Appellate Court, which may give rise to any substantial question of law in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

March 6, 2007
**mohinder*